

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OSCAR SENTELL FAISON,

Plaintiff,

DECISION AND ORDER

03-CV-6475L

v.

SUPERINTENDENT OF SECURITY A. LABRIOLA,
et al.,

Defendants.


On February 16, 2007, defendants filed a Suggestion of Death as to defendant Michael Murray. Thereafter, on June 26, 2007, plaintiff moved for leave to serve a representative of the deceased defendant. Defendants opposed the motion.

Plaintiff's request is denied. Federal Rules of Civil Procedure 25 sets forth procedure for substituting parties based on the death of one of the named parties. The rule requires that a substitution may be made within 90 days of the filing of a Suggestion of Death. Plaintiff failed to meet those requirements and, therefore, the action must be dismissed against defendant Michael Murray.

CONCLUSION

Plaintiff's motion for substituted service (Dkt. #54) is denied. The complaint against defendant Michael Murray is dismissed with prejudice.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 23, 2007.